

numbers from a RespOrg than it intends to use immediately.”²⁷ The Commission has noted that “[h]oarding causes toll free numbers to remain inactive and unavailable for subscribers who need working toll free numbers,”²⁸ and that “hoarding is contrary to the public interest.”²⁹ Finally, the FCC has stated that “Toll free subscribers found to be hoarding and brokering numbers will be penalized.”³⁰

Section 52.107(a)(3) of the Commission’s Rules provides that: “Routing multiple toll free numbers to a single toll free subscriber will create a rebuttable presumption that the toll free subscriber is hoarding or brokering toll free numbers.”³¹ Here, EPS can present no rational reason why its is seeking even one, much less seven, toll free numbers other than that TSYS currently has them to process well over a billion transactions per year. Even if EPS actually were equipped to process its merchants’ payment card transactions directly, its current call volume could not justify more than one toll free number, and it could not rebut Section 52.107(a)(3)’s presumption that its efforts to obtain seven numbers is a classic case of hoarding in violation of the FCC’s Rules. This is yet one more reason why EPS’s efforts to obtain the TSYS numbers are improper, and contrary to the public interest.

Of course, the flip side of hoarding is its sibling “brokering”, which is also prohibited by Section 52.107. Section 52.107(a)(2) provides that: “No person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.”³² The Commission has recognized that “[b]rokering provides motivation for hoarding and

²⁷ *Toll Free Service Access Codes*, 12 FCC Rcd 11162 (1997), at ¶ 33 (footnote omitted).

²⁸ *Id.*

²⁹ *Id.* at ¶ 38.

³⁰ *Id.* at ¶ 141.

³¹ 47 C.F.R. § 52.107(a)(3).

³² 47 C.F.R. § 52.107(a)(2).

therefore results in quicker exhaustion of the current SAC and interferes with the orderly allocation of numbering resources.”³³

Where EPS could easily apply for its own toll free number if it needed one and could port its merchants to that number with the same download it would need to change processors, and where the TSYs numbers are not vanity numbers with any inherent marketing value, the only logical reason for EPS to seek to hoard them is for the purpose of brokering them. Worse, the only conceivable buyers for such otherwise generic numbers would be someone interested in using the confidential financial information transmitted over them for criminal purposes, or an effort by EPS to sell them back to TSYs. Either option would of course be an effort at illegal brokering, and severely contrary to the public interest.

Fortunately, the FCC need not seek to fathom why EPS has gone to such lengths to circumvent the FCC and acquire the TSYs numbers. The transfer it seeks is illegal, its efforts to intimidate TNS into cooperating in such an illegal transfer reprehensible, and the harm it seeks to cause to the public immense.

Conclusion


For the numerous reasons discussed above, TSYs hereby petitions the Commission to promptly exercise its exclusive jurisdiction over toll free numbering and provide confirmation to the parties that (1) a party may not seek to evade the FCC’s exclusive jurisdiction and rules regarding the handling of toll free numbers through collection actions in courts seeking an “ownership” or other interest in another party’s toll free numbers; (2) RespOrgs may not, without explicit authority from the FCC, transfer toll free numbers between unaffiliated subscribers; and (3) efforts by Electronic Payment Systems, LLC to require the transfer of toll free numbers for

³³ *Toll Free Service Access Codes*, 12 FCC Rcd 11162 (1997), at ¶ 38 (footnote omitted).

which TSYS is the subscriber of record violate the Commission's Rules and the SMS/800 Tariff, and are contrary to the public interest, particularly where such a transfer would cause severe disruption to payment card transactions throughout the United States, harm over 750,000 local merchants that rely on the orderly processing of payment card transactions to conduct their business, and adversely impact millions of consumers.

Respectfully submitted,

TSYS ACQUIRING SOLUTIONS, LLC

By: 
Scott R. Flick
Glenn S. Richards

Its Counsel in this Matter

PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W
Washington, D.C. 20037
(202) 663-8000

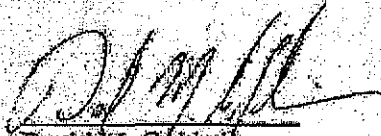
Dated: January 24, 2011

Declaration of David M. Goldwin

I, David M. Goldwin, do hereby declare under penalty of perjury that the following is true and correct:

1. I am the Senior Associate General Counsel of TSYS Acquiring Solutions, LLC. In that position, I have been extensively involved in the company's dealings with Electronic Payment Systems, LLC.

2. I have reviewed the attached "Pentagon." Except for (a) matters cited therein contained in the FCC's records, (b) matters for which other support is provided, and (c) matters of which the Commission may take official notice, the facts set forth therein are true and correct to the best of my personal knowledge and belief.


David M. Goldwin

Dated: January 21, 2011

EXHIBIT 1

WRIT OF EXECUTION

Case No. 1:10mc43

United States District Court		DISTRICT Eastern District of Virginia - Alexandria Division	
TO THE MARSHAL OF: Eastern District of Virginia			
YOU ARE HEREBY COMMANDED, that of the goods and chattels, lands and tenements in your district belonging to:			
NAME TSYS Acquiring Solutions, LLC and held by Transaction Network Services, Inc. and set forth in Schedule A attached hereto.			
you cause to be made and levied as well a certain debt of:			
DOLLAR AMOUNT THREE MILLION, TWO HUNDRED FIFTY-FOUR THOUSAND, SEVEN HUNDRED EIGHTEEN and 92/100 (\$3,254,718.92) DOLLARS with post-judgment interest accruing at the applicable federal rate.		DOLLAR AMOUNT and	
In the United States District Court for the Eastern District of Virginia before the Judge of the said Court by the consideration of the same Judge lately recovered against the said, TSYS Acquiring Solutions, LLC			
and also the costs that may accrue under this writ. And that you have above listed moneys at the place and date listed below; and that you bring this writ with you.			
PLACE United States District Court		DISTRICT Eastern District of Virginia	
CITY Alexandria		DATE March 15, 2011	
Witness the Honorable Liam O'Grady (United States Judge)			
DATE December 15, 2010	CLERK OF COURT Fernando Galindo (BY) DEPUTY CLERK Kathryn M. Stasko <i>Kathryn M. Stasko</i>		
RETURN			
DATE RECEIVED		DATE OF EXECUTION OF WRIT	
This writ was received and executed.			
U.S. MARSHAL		(BY) DEPUTY MARSHAL	

SCHEDULE A

The personal property at issue in this District includes, without limitation, the following general intangibles and/or personal property of TSYS Acquiring Solutions, LLC and its agencies or instrumentalities identified below:

Specific Property:

Toll-free 1-800 numbers 800-370-8507, 877-488-0358 and 800-411-6902 and all documents necessary to provide Electronic Payment Systems, LLC with immediate and continuous ownership, control, and access to said numbers.

Holder of Property:

Transaction Network Services, Inc.

Location of Property

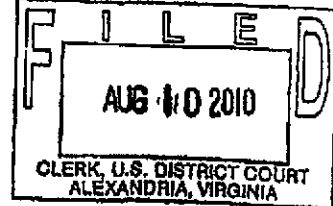
Within District:

11480 Commerce Park Drive, Suite 600, Reston, VA 20191

AO 451 (Rev. 01/09) Clerk's Certification of a Judgment to be Registered in Another District

1:10mc43

UNITED STATES DISTRICT COURT
for the
District of Arizona



TSYS ACQUIRING SOLUTIONS, LLC,

Plaintiff

v.

ELECTRONIC PAYMENT SYSTEMS, LLC

Defendant

Civil Action No. 2:09-cv-00155JAT

CLERK'S CERTIFICATION OF A JUDGMENT TO BE REGISTERED IN ANOTHER DISTRICT

I certify that the attached judgment is a copy of a judgment entered by this court on (date) 05/04/2010.

I also certify that, as appears from this court's records, no motion listed in Fed. R. App. P. 4(a)(4)(A) is pending before this court and that no appeal has been filed or, if one was filed, that it is no longer pending.

Date: 8/9/10

CLERK OF COURT RICHARD H. WEARE



Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

TSYS Acquiring Solutions, LLC,)	AMENDED JUDGMENT ¹
)	
Plaintiff,)	CV-09-155-PHX-JAT
)	
v.)	
)	
Electronic Payment Systems, LLC,)	
)	
Defendant.)	

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed October 22, 2009, granting Defendant's Motion for Summary Judgment, judgment is entered in favor of Defendant and against Plaintiff. The Arbitrator's Findings, Conclusions and Award dated January 20, 2009, in American Arbitration Association Case No. 76-Y-000038-07, is hereby confirmed, awarding the following amounts and relief to Defendant Electronic Payment Systems, LLC, and against Plaintiff TSYS Acquiring Solutions, LLC:

1. Refunds of amounts over-billed by TSYS and paid by EPS
 - a. Transaction fees
\$24,465.16
 - b. Help Desk Services
\$32,436.20
 - c. Monthly Merchant Statement file fees
\$42,884.75
\$32,062.91
\$4,767.00

¹Amended pursuant to the Court's Order filed May 4, 2010.

2. Reimbursement of fines and charges paid by EPS
 - a. VMPD
\$131,875.00
 - b. Papa Gyros Interchange
\$17,607.74
3. \$2,671,463.57 for damages to EPS for its counter-claims in connection with the Billing Element Tables.
4. TSYS shall handle all future calls from EPS merchants as specified in the arbitrator's award and TSYS shall modify the charges on all invoices as reflected in the arbitrator's award.
5. TSYS shall provide EPS with immediate and continuous ownership, control, and access to the toll free 1-800 number that connects EPS' merchants to a processor.
6. \$27,241.49, representing the costs incurred by EPS in connection with the arbitration.
7. The administrative fees and expenses of the American Arbitration Association totaling \$16,750.00 shall be borne entirely by TSYS. Therefore, TSYS shall reimburse EPS the additional sum of Thirty Eight Thousand Six Hundred Fifty Dollars and No Cents (\$38,650.00) representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by EPS, upon demonstration that these incurred costs have been paid.
8. The arbitrator found that TSYS failed to establish that it is entitled to be paid the fees billed for the XML Statement file in the amount of \$2,250 per month. From April 2006 through June 2008, such charges amount to \$60,750. Consistent with the arbitrator's ruling, TSYS shall not charge EPS for the XML Statement file from June 2006 forward.
9. Based on the calculations set forth on Exhibit R-31 before the arbitrator, the arbitrator found and concluded that TSYS over-billed EPS for the CDs between December 2006 and June 2008 in the amount of \$30,595.10 and sustained EPS' dispute in that same amount.

PRINCIPAL AMOUNT AWARDED: \$3,114,798.92

Attorneys' fees: \$139,920.

TOTAL AMOUNT AWARDED THROUGH DATE OF JUDGMENT, OCTOBER 22, 2009: \$3,254,718.92

Interest: post-judgment interest shall accrue at the applicable federal rate.

Plaintiff to take nothing, and complaint and action are dismissed.

May 4, 2010

RICHARD H. WEARE
District Court Executive/Clerk

s/L Dixon
By: Deputy Clerk

cc: (all counsel)

I hereby attest and certify on 8/9/10
that the foregoing document is a full, true and correct
copy of the original on file in my office and in my cus-
tody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA

by [Signature] Deputy

NOTICE TO DEBTOR — HOW TO CLAIM EXEMPTIONS

The attached paper is a legal process which has been issued by the court clerk on request of a creditor who holds a judgment against you or claims that you owe him money or property. This allows the Sheriff either to take or to "levy upon" (make a list of) certain property in your possession for future sale.

The law provides that some types of property and funds (including some wages) cannot be taken by legal process. Such property is exempt. The Sheriff may not take or "levy on" certain property (§§34-26 and 34-27 of the Code of Virginia). Some of these items are:

The family Bible; wedding and engagement rings; family portraits and family heirlooms not to exceed \$5,000 in value; a lot in a burial ground; all wearing apparel of the householder not to exceed \$1,000 in value; all household furnishings including, but not limited to, beds, dressers, floor coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and eating utensils, not to exceed \$5,000 in value; all animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale or profit; medically prescribed health aids; tools, books, instruments, implements, equipment and machines, including motor vehicles, vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall have priority over the claim of exemption under this part ("occupation," includes enrollment in any public or private elementary, secondary, or vocational school or institution of higher education); a motor vehicle, not held as exempt as necessary for use in the course of the householder's occupation or trade owned by the householder not to exceed \$2,000 in value, except that a perfected security interest on the motor vehicle shall have priority over the claim of exemption under this part.

The value of an item claimed as exempt shall be the fair market value of the item less any prior security interest. The monetary limits, where provided, are applicable to the total value of property claimed as exempt.

Exemptions which may apply are listed on the other side of this form and the items listed above can be claimed under No. 12. Please read these carefully.

If you believe that any of your property that the Sheriff wants to take or "levy upon" is exempt, you should tell the Sheriff the property that you believe is exempt and which exemption applies. You should also identify any property which belongs to someone else and who is the owner of such property. A false statement may be punished as contempt under §18.2-456(5) of the Code of Virginia.

If the Sheriff "levies on" or takes property that you believe is exempt, you should promptly (i) fill out the REQUEST FOR HEARING—EXEMPTION CLAIM form and (ii) deliver or mail the form to the clerk's office of this court. If the attached paper is an Attachment Summons, you have the right to a prompt hearing within ten business days from the date that you file your request for a hearing with the court. In all other cases, you must ask for a prompt hearing before the "Return Date" on the attached papers. If the attached paper is a Writ of Fieri Facias, the property may be sold by the Sheriff before the "Return Date;" therefore, if you wish to claim an exemption, you should ask immediately for a prompt hearing on your claim. At a prompt hearing, the only thing that you may do is explain why your property is exempt. If you do not come to court on the date and at the time set and prove that your property is exempt, you may lose some of your rights regarding your property.

If the Sheriff takes your property, you may post a bond to recover your property; however, once you post a bond, the creditor may post a bond to have the property kept from you. If you retain possession of any property "levied on," it is your responsibility not to sell, damage, or otherwise dispose of such property "levied on" until the proceedings are finished.

If the attached paper is an Attachment Summons, a Warrant of Distress, an Order of Seizure in Distress, a Warrant in Detinue or an Order for Detinue Seizure, no judgment has been entered against you yet. On the "Return Date" shown on the attached paper, your case will be tried or scheduled for trial. At that time, you may tell the judge any defenses you may have to the creditor's claims.

It may be helpful to you to promptly seek the advice of an attorney regarding this and other exemption rights.

THE REQUEST FOR HEARING—EXEMPTION CLAIM FOR IS PRINTED ON THE OTHER SIDE.

REQUEST FOR HEARING - EXEMPTION CLAIM

Commonwealth of Virginia

VA. CODE § 8.01-546.1

Case No.

Court

PLAINTIFF/JUDGMENT CREDITOR

V.

DEFENDANT/JUDGMENT DEBTOR

I claim that the exemption(s) which are checked below apply in this case:

MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW —

[There is no exemption solely because you are having difficulty paying your bills.]

- 1. Social Security benefits and Supplemental Security Income (SSI) (42 U.S.C. § 407).
- 2. Veteran's benefits (38 U.S.C. § 5301)
- 3. Federal civil service retirement benefits (5 U.S.C. § 8346).
- 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).
- 5. Longshoremen and Harborworkers Compensation Act (33 U.S.C. § 916).
- 6. Black lung benefits (30 U.S.C. §§ 931 (b)(2)(F) and 932(a)).

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

- 7. Seaman, master or fisherman's wages, except for child or spousal support and maintenance (46 U.S.C.A § 11109).
- 8. Unemployment compensation benefits (§ 60.2-600, Code of Virginia).

This exemption may not be applicable in child support cases (§ 60.2-608, Code of Virginia).

- 9. Portions or amounts of wages subject to garnishment (§ 34-29, Code of Virginia).
- 10. Public assistance payments (§ 63.2-506, Code of Virginia)
- 11. a. Homestead — \$5,000, or \$10,000 if the householder is 65 years of age or older, worth of cash, personal articles or real property (§§ 34-4, Code of Virginia)
[Attach list of items claimed].
- b. Property of disabled veterans — additional \$10,000 worth of cash, personal articles or real property (§ 34-4.1, Code of Virginia) [Attach list of items claimed].

Exemptions listed under 11 may not be claimed in certain cases such as payment of child or spousal support, or the purchase of the article which is being taken or levied on (§ 34-5, Code of Virginia).

- 12. Certain specific articles — see description on reverse side (§§ 34-26 and 34-27, Code of Virginia) [Attach list of articles claimed].
- 13. Workers' Compensation (§ 65.2-531, Code of Virginia).
- 14. Growing crops (§ 8.01-489, Code of Virginia).
- 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).
- 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).
- 17. Assignments of certain salary and wages (§ 55-165, Code of Virginia).
- 18. Pre-need funeral contracts (§ 54.1-2823, Code of Virginia).
- 19. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
- 20. Certain retirement benefits (§ 34-34, Code of Virginia)
- 21. Other (describe exemption): \$

I request a court hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

ADDRESS

TELEPHONE NUMBER

The statements made in this request are true to the best of my knowledge and belief.

DATE

SIGNATURE OF DEFENDANT/JUDGMENT DEBTOR

EXHIBIT 2

1 Scotty P. Krob
Attorney at Law
2 8400 E. Prentice Avenue, Penthouse
Greenwood Village, CO 80111
3 Telephone: (303) 694-0099
Facsimile: (303) 694-5005
4 Email: spkrob@aol.com

5 Attorneys for Defendant
Electronic Payment Systems, LLC
6

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 **TSYS ACQUIRING SOLUTIONS, LLC,**

11 Plaintiff,

Case No. 2:09-cv-00155-JAT

12 v.

DECLARATION OF DANNY E. ADAMS

13 **ELECTRONIC PAYMENT SYSTEMS, LLC**

14 Defendant.
15

16 1. I am a partner in the Washington, D.C. office of the law firm of Kelley
17 Drye and Warren LLP., specializing in the telecommunications area of the law, with
18 more than 30 years of experience in the telecom industry.

19 2. Before entering private practice in 1978, I served for nearly three years as a
20 staff attorney with the Federal Communication Commission, my final position being
21 Special Assistant to the Chief, Common Carrier Bureau (now known as the Wireline
22 Competition Bureau).

23 3. I am familiar with the rules and regulations governing the use and transfer
24 of toll free numbers, sometimes referred to as 800 numbers. Those rules and regulations
25 are contained primarily in 47 C.F.R. Part 52, in the Shared Management System
26 (SMS/800) Functions tariff, filed by Database Service Management, Inc., and in the
27 Industry Guidelines for Toll Free Number Administration, Issue 13 dated July 2003,
published by the Alliance for Telecommunications Industry Solutions.

28 4. Toll free numbers are obtained by Responsible Organizations ("RespOrgs")

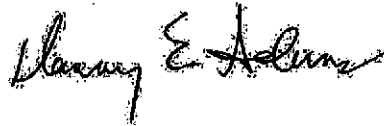
1 from the Shared Management System database (SMS Database) and provided to
2 subscribers for their use. The "subscriber of record" of a toll free number has the right to
3 the use and control of the toll free number (though not of "ownership" *per se*).
4 RespOrgs are required to follow the instructions of the subscriber of record of a number
5 in connection with the administration of each toll free number.

6 5. Although there are no private property rights permitted in toll free numbers,
7 the rights of a subscriber of record to access and control of a toll free number can be
8 conveyed to another subscriber. For example, such conveyances are a common practice
9 in corporate mergers and acquisitions. I have been involved in numerous transactions
10 that included conveying the interest of one subscriber in toll free numbers to another
11 subscriber.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on January 6, 2011.

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Danny E. Adams

CERTIFICATE OF SERVICE

I, Cherie L. Mills, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing "PETITION" was served via first class U.S. mail, postage pre-paid, on this 24th day of January, 2011, to the following:

Scotty P. Krob
Attorney at Law
8400 E. Prentice Avenue, Penthouse
Greenwood Village, CO 80111
Counsel to Electronic Payment Systems, LLC

Jim McLaughlin
General Counsel
Transaction Network Services, Inc.
11480 Commerce Park Drive
Suite 600
Reston, VA 20191


Cherie L. Mills